

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPLAINT OF GAMEFLY, INC.

Docket No. C2009-1R

**UNITED STATES POSTAL SERVICE NOTICE OF FILING**  
(May 6, 2013)

Consistent with the Commission's "expect[ation] that [the Postal Service and GameFly] will make the most of this opportunity to fashion a remedy [to the PRC Docket No. C2009-1 Complaint] acceptable to both without the unnecessary use of time or resources,"<sup>1</sup> today the Postal Service files a letter it submitted to GameFly. This letter, dated May 3, 2013, "describes the Postal Service's position regarding the processing of GameFly's DVD mail, if it were to be submitted as letters eligible for the First-Class Mail one-ounce letter rate." More specifically, it states that "[t]o the extent possible and practicable, the Postal Service is prepared to process GameFly letters using methods that avoid letter machine processing to substantially the same degree experienced by DVD mail submitted by other mailers who present mail with similar packaging that qualifies for the letter rate." This letter is not a settlement offer and was submitted outside the scope of the settlement process.

The Commission will note that the operational treatment offered in the May 3, 2013 letter for machinable single-ounce First-Class Mail letters mailed by GameFly is similar to the third operational remedy that it proposed in its Order No. 1700.<sup>2</sup> The major difference is that the May 3, 2013 letter offers "processing methods that avoid

<sup>1</sup> PRC Docket No. C2009-1R, Order No. 1700, Order Convening Settlement Conference (April 16, 2013) at 10.

<sup>2</sup> *Id.* at 9, Appendix III.C.

letter machine processing” for letter-shaped DVD mail, and the Commission’s proposed remedy describes “manual processing” for letter-shaped DVD mail. The Postal Service’s position addresses a concern expressed by DVD letter mailers<sup>3</sup> – breakage on automated letter processing machines – and reflects the evolution of the Postal Service operating environment, particularly the increased utilization of equipment that limits opportunities for manual culling, and resulting changes in DVD letter mailers’ expectations regarding the methods of processing applied to their mail. Although the offer described in the May 3, 2013 letter does not include an enforcement mechanism, the letter explains that “[t]he Postal Service will [] monitor the successful achievement of the overall operational objective establishing parity in the utilization of processing methods that avoid automated letter machines, and will take action, if there are significant and unexplained deviations from that goal.” In addition, the Postal Service identifies enforcement capabilities, as recognized by the Commission, arising from the use of Intelligent Mail barcode tracing.

In the event that the Commission determines to impose a remedy other than its original remedy, or one identical to the offer in the Postal Service’s May 3, 2013 letter, the Postal Service reiterates its position that the Commission must reopen the record to develop sufficient support for such a remedy. As cited in the May 3, 2013 letter, the operating environment and DVD letter mailers’ expectations regarding mail processing have evolved since the development of the record in PRC Docket No. C2009-1, and reliance on that record in creating a new remedy would likely result in a remedy that is unsuited to the current operating environment. Creation of a new pricing remedy

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<sup>3</sup> Because GameFly has never mailed a DVD letter, it is not part of this group. However, to the extent that GameFly has an interest in entering the DVD letter market, as it alleges, it would benefit from the operational treatment described in the May 3, 2013 letter.

without record support would raise serious due process concerns, and, as explained in the Postal Service's reply to GameFly's motion concerning the Court's remand,<sup>4</sup> could lead to litigation from a universe of mailers much larger and less confined than the distinct mailer segment involved in this docket.<sup>5</sup>

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>4</sup> PRC Docket No. C2009-1, United States Postal Service Reply in Opposition to Motion of Gamefly, Inc., to Establish Standards and Procedures to Govern Proceedings on Remand (March 14, 2013).

<sup>5</sup> *Id.* at 7-8.

May 3, 2013

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**RE: Processing of GameFly Mail**

Dear Mr. Levy:

This letter describes the Postal Service's position regarding the processing of GameFly's DVD mail, if it were to be submitted as letters eligible for the First-Class Mail one-ounce letter rate. The statement arises out of issues presented pursuant to the Court of Appeals' remand to the Postal Regulatory Commission (PRC), in *GameFly, Inc. v. Postal Regulatory Commission*, No. 11-1179 (D.C. Cir., Jan. 11, 2013).

To the extent possible and practicable, the Postal Service is prepared to process GameFly letters using methods that avoid letter machine processing to substantially the same degree experienced by DVD mail submitted by other mailers who present mail with similar packaging that qualifies for the letter rate. Pursuant to this determination, the Postal Service will inform local managers of this objective. The actual processing treatment afforded any DVD letter mail will remain within the discretion of local management, in accordance with its assessment of local operating conditions and the goals of effectiveness and efficiency in mail processing and delivery. Given the substantial variations in conditions and operations experienced in the field, including the characteristics of mail from different mailers, it is unrealistic to expect that precise levels of machine processing will be matched for each mailer. Nevertheless, the Postal Service is confident that the expectations created by this uniform objective will dramatically influence local decision-making, and will result in substantial parity for all DVD letters that are easily identifiable in the mailstream with respect to the application of mail processing methods that avoid automated letter machine processing.

In this regard, it is important to understand that the operating environment affecting the processing of DVD letters has evolved considerably in the last few years and continues to change. The volume of DVD letters has declined significantly, and the Postal Service has deployed equipment that significantly affects the ability to cull letters to avoid all machine processing. In addition, the Postal Service notes that local decisions whether to avoid machine processing, as well as the expectations of mailers, are evolving. While these changes are not likely to be uniform for all mailers in all locations, the overall trend is toward more machine processing of DVD letters, and an overall reduction in the total volume of

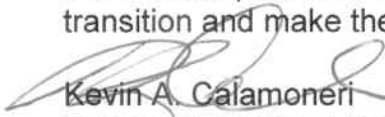
DVD mail. This evolution, combined with continuing modifications in the Postal Service's processing and transportation network, are likely to have significant influence on local processing decisions. Those decisions, however, will likely continue to exhibit reasonable variations, in accordance with operating conditions, the character of each mailpiece, and the mailers' expectations and needs.

One consequence of these variations is that it would be difficult, if not practically impossible, or exceedingly costly, to maintain an ongoing enforcement mechanism that would ensure that every mailer's DVD letters will receive exactly the same levels of manual processing experienced by every other mailer of DVD letters, either locally or nationally. The Postal Service will, however, monitor the successful achievement of the overall operational objective of establishing parity in the utilization of processing methods that avoid automated letter machines, and will take action, if there are significant and unexplained deviations from that goal. Additionally, GameFly will be able to use Intelligent Mail barcode (IMb) tracing data to identify the mail processing received by its DVD mail, and work with the Postal Service to resolve any concerns.

As this course is adopted, important conditions must apply that will affect the Postal Service's ability to achieve its operational objectives. In practice, these will include the following:

- GameFly must color or mark its mailpiece to make it more easily and uniquely identifiable. This is necessary because it enables Postal Service employees to identify and cull GameFly mailpieces when possible.<sup>1</sup>
- GameFly must employ a mailpiece that qualifies for the one-ounce machinable First-Class Mail letter price. This will enable GameFly to enjoy the same rates as other DVD mailers, and allow the Postal Service to employ the same processes within the same mailstream.

If GameFly elects to convert to letter mail, the Postal Service is willing to work with it to resolve problems and reach reasonable accommodations to ease the transition and make these changes successful.



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<sup>1</sup> Employees involved in local post office and collection and mail processing operations exercise discretion in determining how to handle DVD letter mail. In some situations, these employees identify manual culling as the most appropriate mail processing method. Manual culling can become a viable mail processing option for GameFly DVD mail in more situations if GameFly mailpieces take on a unique, contrasting coloration that makes them as recognizable as other DVD mailpieces.